

COLUMNIST ENDORSES WAR CRIMES AGAINST AL QAEDA BECAUSE THEY MURDERED A JOURNALIST

I had never heard of Alex Beam before today, but his column in today's Boston Globe crossed my email (h/t dakine01) and I am still fuming at his cavalier endorsement of war crimes. Perhaps even more infuriating, though, is that Beam's endorsement of war crimes is an aside tossed in while Beam is making an argument with which I otherwise agree.

Beam's central point, as he suggests in his title for the column, "A double standard on war crimes?", is that while John Yoo has been widely vilified for his role in authoring the OLC memos that authorized torture, David Barron and Martin Lederman haven't been attacked nearly as aggressively for authoring the OLC memos under which Anwar al-Awlaki, an American citizen, was killed in Yemen. My only quibble with that point is that Beam's roster for the torture memos should be expanded to also include at least Jay Bybee and Steven Bradbury. His argument:

So, which is the greater crime against the Constitution that all three men swore to uphold? Waterboarding Al Qaeda suspects or killing US citizens? Yoo has been vilified from Marin County to Munich for his legal opinion. If the Obama lawyers are facing job loss or tenure revocation, I haven't heard about it. This is not a subject they care to discuss.

Beam relies on Mary Ellen O'Connell of Notre Dame to further his argument:

"I do think the two cases call for a different level of criticism," she says. "Isn't killing worse than torture? Even if the arguments to support torture are weaker arguments, it seems to me that the US should err on the side of the strictest compliance of the law when it comes to taking somebody's life."

Where is the outrage, I asked? It won't come from the right, she pointed out, "because the policies that Obama is pursuing are basically the same policies that Bush pursued." So where are the principled men and women of the left? "Some of the people who criticized Yoo and his colleagues are in the administration," she answered. "Marty Lederman was a critic of John Yoo, and now he's writing the memos. So he's not going to criticize himself."

I agree that Lederman and Barron should be subjected to the same level of criticism as Yoo (and Bybee and Bradbury), although I'm less inclined to make a distinction between the crimes of murder and torture. I find both equally heinous and never justified under any conditions. As O'Connell points out, the torture arguments likely were much farther outside the law than the extrajudicial execution arguments, but I still can't join her in making killing artificially a higher crime than torturing.

But here is the jaw-dropping problem with Beam's column. Just a bit over halfway through the column, we get this paragraph:

Two points. First, I'm all for waterboarding Al Qaeda bad guys, and the disappearance of al-Awlaki and his ilk by whatever means necessary bothers me not a whit. My interest in the civil rights of Arab terrorists took a dive when a bunch of them passed a knife across journalist Daniel Pearl's neck.

Second, you've got to be pretty naive if you're plotting your life course according to the moral compass of lawyers, regardless of their stellar pedigrees. If you're former deputy attorney general Eric Holder and you need to dream up a reason for Bill Clinton to pardon megacrook Marc Rich, you find one. If you work for current attorney general Holder, as Barron and Lederman did, and you need to gin up a rationalization for killing a US citizen overseas, you do it.

Beam's second point is standard "Let's kill all the lawyers", especially as filtered through a right-wing hatred of Clinton and Obama. I agree that Holder has prostituted himself for many issues over the years, but I put that squarely on Holder's shoulders rather than saying that his failings are the result of being associated with Clinton and Obama.

But oh, that first point. Beam is "all for waterboarding al Qaeda" and "the disappearance of al-Awlaki and his ilk by whatever means necessary". His reason for this abandonment of the Constitution and reliance on due process to mete out government "justice"? It's not 9/11 and al Qaeda's attack on the US, as most who hate "Arab terrorists" spout in the "they attacked us first" defense, but Beam's reasoning is a bit more personal: " My interest in the civil rights of Arab terrorists took a dive when a bunch of them passed a knife across journalist Daniel Pearl's neck."

I'm guessing the thinking must have gone something like this. Beam didn't seem to develop specific animosity to al Qaeda from 9/11, perhaps because the United States is a large target and he is just one of hundreds of millions of potential targets, even though they killed a few thousand on 9/11. But just a few months later, al Qaeda executed journalist Daniel Pearl. Beam must have thought "Uh oh, they kill journalists and I write a column in a

major newspaper. Let's torture and murder those bastards!" It's very surprising that Beam didn't make the direct connection that it was Khalid Sheikh Mohammed himself, who eventually was waterboarded 183 times, who is said to have been the one who passed that knife across Pearl's neck.

And yes, Mr. Beam, if you are looking for where the outrage is over the targeting killing of Anwar al-Awlaki, you can certainly find a healthy dose of it among a few of us. Try looking at posts here at Emptywheel with the tag "Anwar al-Awlaki" for starters. By golly, if you scroll back far enough among those posts, you'll find that the discussion started even before al-Awlaki was killed and that there is also the difficult issue of the US killing al-Awlaki's sixteen year old son in a subsequent attack. You'll also find detailed discussion of the narrow conditions under which there could be legal justification for killing a US citizen and how the Anwar al-Awlaki case likely falls outside those conditions. Branch out a bit from the narrow al-Awlaki case and read few posts on the broad category of drones here, and you will find that a few of us care pretty deeply about the Constitution, due process and even international law as it applies to what you would be likely to disregard as mere "collateral damage" when innocent civilians are killed by drones.